

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

LARRY G. PHILPOT,)
Plaintiff,)
v.)
MANSION AMERICA, LLC, and) Case No. 1:14-cv-01357-TWP-DML
OAK RIDGE BOYS THEATER,)
Defendants.)

ORDER ON MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

This matter is before the Court on Plaintiff Larry G. Philpot’s (“Mr. Philpot”) Motion for Leave to File Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a) ([Filing No. 17](#)). Mr. Philpot initiated this action, asserting various copyright claims against Defendants Mansion America, LLC and Oak Ridge Boys Theater for alleged copyright violations involving a photograph of musician Willie Nelson taken and copyrighted by Mr. Philpot. Mansion America moved to dismiss Mr. Philpot’s Complaint based on lack of personal jurisdiction. Mr. Philpot requested and was granted leave to conduct discovery to respond to Mansion America’s motion to dismiss. As a result of the limited discovery, Mr. Philpot now seeks leave to amend his Complaint to add additional defendants to this action. For the following reasons, the Court **GRANTS** the Motion for Leave to File Amended Complaint.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 15(a)(1) allows a party to amend its pleading once as a matter of course within twenty-one days after serving it, or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b).” After a responsive pleading has been filed and twenty-one

days have passed, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. Pro. 15(a)(2). The Rule, however, “do[es] not mandate that leave be granted in every case. In particular, a district court may deny a plaintiff leave to amend his complaint if there is undue delay, bad faith[,] or dilatory motive . . . [, or] undue prejudice . . . , [or] futility of amendment.” *Park v. City of Chicago*, 297 F.3d 606, 612 (7th Cir. 2002) (internal citation and quotation marks omitted). “Whether to grant or deny leave to amend is within the district court’s discretion.” *Campbell v. Ingersoll Milling Machine Co.*, 893 F.2d 925, 927 (7th Cir. 1990).

II. BACKGROUND

Mr. Philpot is a professional photographer who takes photographs of musicians and then licenses his photographs to various end users. On October 4, 2009, Mr. Philpot took a photograph of Willie Nelson while he was performing in St. Louis, Missouri. Approximately three years later, Mr. Philpot secured a copyright for this photograph through the United States Copyright Office on September 5, 2012. Before securing the copyright, Mr. Philpot published the photograph on the internet on May 31, 2011.

On April 30, 2013, a copy of Mr. Philpot’s photograph of Willie Nelson with the caption “Happy 80th Birthday -- Willie Nelson!” appeared on Oak Ridge Boys Theater’s Facebook fan page without any attribution to Mr. Philpot. Posting a copy of the photograph on the Facebook page caused it to be available for viewing and further copying by approximately 19,000 people. Individual “fans” of the Facebook page have shared the copy of the photograph from the Facebook page approximately 440 times. Mr. Philpot discovered the copy of his photograph on the Facebook page in February 2014. Mansion America and Oak Ridge Boys Theater did not pay for a license to reproduce the photograph, so Mr. Philpot issued a cease and desist letter to them on May 8,

2014. After the Defendants refused to remove the photograph or pay for a license, Mr. Philpot initiated this lawsuit.

III. DISCUSSION

Mr. Philpot filed his Complaint against Mansion America and Oak Ridge Boys Theater on August 18, 2014 ([Filing No. 1](#)). On October 1, 2014, Mansion America responded to the Complaint by filing a motion to dismiss for lack of personal jurisdiction ([Filing No. 12](#)). On October 14, 2014, in response to Mansion America’s motion to dismiss, Mr. Philpot requested leave to conduct discovery to assist him in responding to the motion to dismiss ([Filing No. 14](#)). The Court granted leave to Mr. Philpot to conduct limited discovery ([Filing No. 16](#)).

Following discovery, Mr. Philpot filed his Motion for Leave to File Amended Complaint on December 19, 2014 ([Filing No. 17](#)). In the Motion, Mr. Philpot explains that he is seeking to amend his Complaint to add additional defendants to this action based on Mansion America’s “recent discovery responses,” which provided the identity of the additional parties who had been unknown to Mr. Philpot until the discovery responses were provided. Mansion America’s discovery responses provided additional information regarding the ownership and control of Oak Ridge Boys Theater and its Facebook fan page. Mansion America and Oak Ridge Boys Theater have not responded to Mr. Philpot’s Motion for Leave to File Amended Complaint.

Upon review of the record, the Court determines that there is no undue delay, bad faith, dilatory motive, undue prejudice, or futility of amendment. This is Mr. Philpot’s first request to amend his Complaint. He has diligently pursued discovery and prosecuted his case. Justice requires that leave be granted to amend the Complaint.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Mr. Philpot's Motion for Leave to File Amended Complaint ([Filing No. 17](#)). The Amended Complaint, submitted at [Filing No. 17-1](#), is deemed filed as of the date of this Order and now is the operative pleading in this action. Mr. Philpot is ordered to effectuate service on each Defendant.

SO ORDERED.

Date: 8/7/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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